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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JACOB B. et al, Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.M.,

Defendant and Appellant.

B268827

(Los Angeles County
Super. Ct. No. DK13115)

APPEAL from an order of the Superior Court of Los Angeles County. Philip L. Soto, Judge. Reversed.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

V.M. (Mother) appeals from the order of the juvenile court asserting jurisdiction over her son (age 13) and daughter (age 8) under Welfare and Institutions Code section 300, subdivision (b).¹ DCFS concedes, and we agree, that it failed to present sufficient evidence of serious physical harm or risk of the same to support jurisdiction under that section. Accordingly, we reverse the order.

FACTS AND PROCEEDING BELOW

The family came to the attention of the Department of Children and Family Services (DCFS), on August 7, 2015, based on allegations that the children were being physically abused by their father, Joe B. (Father).² DCFS investigated and found that the allegations of Father's physical abuse were unfounded, but it instead determined that Mother's false allegations endangered the children's emotional and physical health and safety. On August 31, 2015, based on these allegations, DCFS filed a petition asserting jurisdiction under section 300, subdivision (b). The petition claimed that the parents were engaged in an ongoing and contentious custody dispute, that Mother had repeatedly made false allegations of physical abuse against Father, that Mother caused the children to give false and misleading information to DCFS regarding their treatment by Father, that Mother subjected the children to numerous interviews regarding Father's alleged abuse, and that such allegations of child abuse by Mother endangered the children's emotional and physical health and safety.

On November 2, 2015, the court sustained the petition under section 300 subdivision (b), finding that Mother's false allegations of abuse by Father endangered the physical and emotional health and safety of the children, and declared the children dependents of the court.

Mother filed this appeal.

¹ All statutory references are to the Welfare and Institutions Code.

² Father is not a party to this appeal.

DISCUSSION

The court made no specific findings of physical abuse but nonetheless sustained the petition as alleged. Mother contends, and DCFS concedes, that jurisdiction under section 300, subdivision (b) cannot be established without a showing of physical harm or risk of physical harm and here there was an absence of such evidence. We agree.

Section 300, subdivision (b) provides a basis for asserting dependency jurisdiction if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child.” A finding of jurisdiction under section 300, subdivision (b), requires: “ ‘(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.’ ” (In re Jesus M. (2015) 235 Cal.App.4th 104, 111.) A court may assert jurisdiction under section 300, subdivision (b), only when the evidence proves that a child is exposed to serious *physical* harm or a substantial risk of serious *physical* harm or illness. (Ibid.) Here, as DCFS concedes, it did not allege specific acts of physical abuse, but only claimed vague physical and emotional harm as a result of Mother’s false allegations regarding Father. Nor is the evidence sufficient to prove any acts of physical abuse.³

³ Section 300, subsection (c) deals with emotional damage to a child but DCFS did not allege injury under that subsection. Nor does DCFS now claim that sufficient evidence existed to support jurisdiction under that subsection.

DISPOSITION

The court's jurisdictional order is reversed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.